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In re Application of  
ALLEN et al.  
Application No.: 09/857,522  
PCT No.: PCT/US99/29824  
Int. Filing Date: 15 December 1999  
Priority Date: 16 December 1998  
Attorney Docket No.: BB1315  
For: PLANT CARBON CATABOLITE  
REPRESSION PROTEINS

DECISION ON PETITION

This is a decision on applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" filed in the Patent and Trademark Office (PTO) on 14 May 2003.

**BACKGROUND**

On 15 December 1999, applicants filed international application no. PCT/US99/29824 which claimed a priority date of 16 December 1998. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 16 June 2001.

On 04 June 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and a declaration of inventors.

On 27 July 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENT UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES (Form PCT/DO/EO/920) indicating that applicant had not submitted the required sequence listing pursuant to 37 CFR 1.821-1.825. Furthermore, the Notification stated that the sequence listing was not in compliance with 37 CFR 1.821-1.825 in that a copy of the "sequence listing" in a computer readable form had not been submitted as required by 37 CFR 1.821(e).

On 27 September 2001, applicants filed "Statement under 37 CFR 1.821(g) and 1.825(b)" which included a substitute computer readable form of the "Sequence Listing."

On 31 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the "nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 CFR 1.821-1.825 for the following reasons: A copy of the 'Sequence Listing' in computer readable form has been submitted. The content of the computer readable form, however, does not comply with the requirements of 37 CFR 1.822 and/or 1.832, as indicated on the attached marked up copy of the 'Raw Sequence Listing.'"

On 31 January 2002, the above identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 27 July 2001 within the time period set therein.

On 18 March 2002, applicants filed "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a). The petition was dismissed without prejudice in a Decision dated 12 February 2003.

On 14 May 2003, applicants filed the present petition under 37 CFR 1.137(b).

### DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response is the required sequence listing pursuant to 37 CFR 1.821-1.825.

As to Item (2), the appropriate petition fee of \$1300.00 as required by 37 CFR 1.17(m) will be charged to Deposit Account no. 04-1928.

With regard to Item (3), applicants' statement that "the entire delay in filing the 35 U.S.C. 371(c) requirement from their due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since the international application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

**CONCLUSION**

All of the requirements of 37 CFR 1.137(b) have been met and applicant's petition to revive is **GRANTED**.

The application has an international filing date of 15 December 1999 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **04 June 2001**.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.



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